

# ARTICLE 27. REASONABLE ACCOMMODATIONS

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## 27.1 PURPOSE STATEMENT

It is the policy of the City of New Orleans, pursuant to the federal Fair Housing Amendments Act of 1988 and applicable state laws, to provide individuals with disabilities reasonable accommodation in the City's zoning and land use regulations, rules, policies and practices to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities. Reasonable accommodations in the zoning and land use context means providing individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

## 27.2 APPLICATIONS

- A. An application for reasonable accommodations may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities.
- B. If the project or use for which a request is made for reasonable accommodation also requires, or is related to, other discretionary permits for the same project, the request for reasonable accommodation may be filed with the application for the other discretionary permit.
- C. A fee shall not be required for an application for reasonable accommodation, but if a project requires a discretionary permit, the fee for such permit shall continue to apply.
- D. Notice of the availability of reasonable accommodation applications shall be prominently displayed at public information counters in the City Planning Commission office, advising of the availability of the procedure for eligible individuals, developers and providers of housing for individuals with disabilities. Forms for requesting reasonable accommodation shall be available to the public in the City Planning Commission office.
- E. For purposes of this Article, an individual with a disability means someone who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having such impairment, or anyone with a record of such impairment.

## 27.3 REQUESTS FOR REASONABLE ACCOMMODATIONS

- A. Requests for reasonable accommodations shall be made to the Executive Director of the City Planning Commission in writing, using the appropriate City form, and shall provide the following information:
  - 1. Name and address of the individual or entity requesting reasonable accommodation. If the applicant is applying on behalf of an individual with a disability, the name and address of the individual with a disability shall also be provided.

2. Address of the property for which the accommodation is requested.
  3. Attestation that the applicant is (a) an individual with a disability, (b) applying on behalf of an individual with a disability, or (c) a developer or provider of housing for one or more individuals with a disability.
  4. Description of the disability at issue, the requested accommodation, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought.
  5. Documentation that the specific accommodation requested by the applicant is necessary for the individual(s) with the disability to use and enjoy the dwelling, or is necessary to make the development of housing for individuals with disabilities financially or practically feasible.
  6. Any other information that the Executive Director of the City Planning Commission concludes is necessary in order to make the findings required by Section 27.5 as may be in accordance with applicable local, state and federal Fair Housing Laws.
- B. Any personal information regarding the disability status identified by an applicant **as** confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or individual and shall not be made available for public inspection.
  - C. A request for reasonable accommodations in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation request does not affect an applicant's obligations to comply with other applicable regulations not at issue in the requested accommodation.
  - D. If an individual needs assistance in making a request for reasonable accommodation, the City will provide assistance to ensure that the process is accessible.

#### **27.4 REVIEWING AUTHORITY**

- A. Requests for reasonable accommodation made pursuant to this Article shall be reviewed by the Executive Director of the City Planning Commission, using the criteria set forth in Section 27.5.
- B. The Executive Director shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application, and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth in Section 27.5.
- C. If necessary to reach a determination on the request for reasonable accommodation, the Executive Director may request further information from the applicant consistent with applicable fair housing laws, specifying in detail the information that is required. If such a request for additional information is made, the running of the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.

#### **27.5 REQUIRED FINDINGS**

- A. The written decision to grant, grant with modifications or conditions, or deny a request for reasonable accommodation shall be consistent with applicable fair housing laws and based upon the following factors:
  1. Whether the housing that is the subject of the request for reasonable accommodation will be used by an individual with a disability protected under the applicable fair housing laws.

2. Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the applicable fair housing laws.
  3. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
  4. Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use and zoning or building program.
  5. Whether the requested accommodation would, under the specific facts of the case, result in a threat to the health or safety of other individuals or substantially damage the property of others.
- B.** In making the findings, the Executive Director may approve alternative reasonable accommodations that provide an equivalent level of benefit to the applicant with respect to (a) enabling the individual(s) with the disability to use and enjoy the dwelling, or (b) making the development of housing for individuals with disabilities financially or practically feasible.
- C.** Factors for Consideration – Necessity. The Executive Director may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:
1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
  2. Whether the individual(s) with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.
  3. In the case of developers or providers of housing for individuals with disabilities, whether the requested accommodation is necessary to make a facility or facilities of a similar nature or operation economically viable in light of the relevant market and market participants.
  4. In the case of developers or providers of housing for individuals with disabilities, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individual(s) with a disability an equal opportunity to live in a residential setting.
- D.** Factors for Consideration – Fundamental Alteration/Reasonableness. The Executive Director may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of a City program:
1. Whether the requested accommodation would fundamentally alter the character of a neighborhood.
  2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.
  3. Whether granting the requested accommodation would substantially undermine any express purpose of the City's Master Plan.
  4. In the case of a developer or provider of housing for individuals with disabilities, whether the requested accommodation would create an institutionalized environment due to the number of, and distance between, facilities that are similar in nature or operation.

## **27.6 WRITTEN DECISION**

- A.** The written decision of the Executive Director on a request for reasonable accommodation shall explain in detail the basis of the decision, including the Executive Director's findings on the criteria set forth in Section 27.5. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeal process set forth in Section 27.7. The notice of decision shall be sent to the applicant by certified mail.
- B.** The written decision of the Executive Director shall be final unless an applicant files an appeal to the Board of Zoning Adjustments in accordance with Section 27.7.
- C.** If the Executive Director fails to render a written decision on the request for reasonable accommodation within the thirty (30) day period established in Section 27.4, the request shall be deemed granted.
- D.** While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

## **27.7 APPEALS**

- A.** Within thirty (30) days of the date of the Executive Director's decision, an applicant may appeal an adverse decision to the Board of Zoning Adjustment. Such appeals shall be made in writing, using the appropriate City form.
- B.** If an individual needs assistance in filing an appeal on an adverse decision, the City shall provide assistance to ensure that the appeals process is accessible.
- C.** All appeals shall contain a written statement of the grounds for the appeal. Any personal information related to the disability status identified by an applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection.
- D.** In considering an appeal of a decision of the Executive Director, the Board of Zoning Adjustments shall consider (a) the application requesting a reasonable accommodation, (b) the Executive Director's decision, (c) the applicant's written statement of the grounds for appeal, and (d) the provisions of this Article, in order to determine whether the Executive Director's decision was consistent with applicable fair housing laws and the required findings established in Section 27.5.
- E.** Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

## **27.8 EXPIRATION**

- A.** Any approval granted for a reasonable accommodation in accordance with this Article shall expire twenty-four (24) months from the effective date of the approval unless:
  - 1.** Construction of the approved work has commenced in accordance with an approved building permit, where applicable.
  - 2.** A certificate of occupancy for the approved work has been issued.
  - 3.** The use authorized by the reasonable accommodation is legally established.
  - 4.** An extension of time has been granted by the Executive Director in accordance with Section 27.8.B.

- B.** The Executive Director may approve up to three (3), one-year extensions of time for an approval of a reasonable accommodation, upon a showing of good cause by the applicant for each such extension. Any request for an extension of time for an approval of a reasonable accommodation shall be made in writing to the Executive Director at least thirty (30) days prior to the expiration date.

## **27.9 MISCELLANEOUS**

- A.** Any accommodation granted to an individual with a disability shall be considered personal to that individual, and shall not run with the land. Accordingly, the Executive Director (or the Board of Zoning Adjustments on appeal) may condition the approval of any such accommodation on (a) removal of any improvements constructed pursuant to the accommodation, where the removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists; (b) time limits and/or expiration of the accommodation, when the need for which the accommodation was granted no longer exists; or (c) recordation of a covenant, building restriction or deed restriction putting prospective buyers of the subject property on notice regarding the personal nature of the accommodation and any conditions relating thereto.
- B.** No request for reasonable accommodation that has been denied in whole or in part may be resubmitted within one (1) year of the date of the denial, except upon a showing of materially changed conditions.
- C.** Any request to modify an approved accommodation shall be treated as a new application unless, in the opinion of the Executive Director, the requested modification results in only a minor change, is within the authority of the Executive Director to approve, and is consistent with the original approval.